(1995) 11 DEL CK 0101

In the Delhi High Court

Case No : Election Appeal No. 142 of 1989 and Execution Appeal No. 90 of 1978

Harjinder Kaljr and Others APPELLANT

Vs

Usha Gupta and Another RESPONDENT

Date of Decision : 01-11-1995

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58

Citation : (1996) 61 DLT 102 : (1996) 222 ITR 200

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : S.K. Bahadur, R.C. Verma and R.C. Pandey, for the Appellant;

Judgement

N.G. Nandi, J.

(1) A suit being Suit No. 294/74 for specific performance for an agreement to sell, came to be filed by Seth Narain Singh and others against Smt. Usha Gupta and another in respect of property bearing No. 28 situate at khewat No. 1 Khatauni N 1392 Khasra No. 2022/1558 measuring 1583 sq. yards - 1402 sq. meters approximately situate on Pusa Road, Ajmal Khan Road, Karol Bagh, New Delhi (hereinafter referred to as the ''property''). It is suggested that the suit came to be decreed on 19th May, 1978 and the Execution Proceedings No. 90 of 1978 for the execution of the said decree. It is also suggested that the plaintiff (decree-holder L.R.of deceased Narain Singh) pursuant to the decree deposited the consideration amount for getting the sale deed in her favor. At that stage, the Tax Recovery Officer, Mayur Bhawan, New Delhi vide their letter No. Troxx, New Delhi dated 17.6.1988, addressed to the Registrar, Delhi High Court, New Delhi preferred a claim to the sale proceeds amounting to Rs. 6,45,000.00, lying with the Registrar, Delhi High Court, New Delhi towards there recovery of outstanding demand against Shri J.C. Gupta, resident of 204 Ashutosh Building, 9th Floor, Napean Sea Road, Bombay, which has led to the filing of this E.A. 142 of 1989 under Order 21 Rule 58 of the CPC objecting to the attachment of the amount of Rs. 6,45,000.00. The objector is judgment-debtor No. I (original defendant).

(2) It has been the say of the objector (judgment-debtor No. I) that the objector was the absolute owner of the property by virtue of Gift Deed dated 16th March, 1970registered on 18th January, 1981 in the office of the Sub-Registrar, Bombay; that the said property was gifted to her by her mother-in-law Smt. Shanti Devi wife of Shri J.C. Gupta who was the previous absolute owner of the property; that the objector as an absolute owner had entered into an agreement to sale dated 17th May, 1970 with Seth Narain Singh for a total consideration of Rs. 7,45,000.00. That Seth Narain Singh on 28th July, 1972 filed a suit for specific performance against the objector. After the death of Seth Narain Singh,. his legal representatives were brought on record in Suit No. 294 of 1972 and the suit was ultimately compromised between the parties and the compromise decree on 19th May, 1978. That the statement of this objector was also recorded on 19th May, 1978. That in October-November, 1988 Mr. J.C. Gupta her father-in-law told her that the Income Tax Authorities had issued notice for attachment to him in respect of the said property and till then the objector was not aware of the execution of the sale deed and the deposit of the sale proceeds in the registry of the Delhi High Court. It is stated that the Income Tax Authorities had neither issued notice to the objector nor they had filed any proper application before this Court regarding their claim to the sale proceeds of the said property. That the Income Tax Authorities cannot withdraw the aforesaid amount of Rs. 6,45,000.00 in view of the fact when no amount whatsoever is due and payable from the objector to the Income Tax Department. That the amount is the exclusive property of the objector and the Income Tax Authorities have no concern with the said amount. In substance, objector contends that she is the absolute owner of the property and Mr. J.C. Gupta has no right, title or interest in the said property and, Therefore, the amount is not liable to be attached on account of the tax liabilities of Mr. J.C. Gupta or any other person.

(3) It is not in dispute that the property originally belonged to Mr. J.C. Gupta, 104 father-in-law of the objector and that the said property came to be gifted to Smt. Shanti Devi wife of Mr. J.C. Gupta in the year 1949. It is also admitted position that the property came to be gifted by Smt. Shanti Devi to her daughter-in-law, the objector (judgment-debtor No. 1) on 16th March, 1970 and thereafter the objector Smt. Usha Gupta entered into an agreement to sale the said property to Seth Narain Singh and the said property came to be conveyed to the legal representatives of the deceased Seth Narain Singh under the Court decree for specific performance of the agreement and the sale proceeds deposited with the Registrar, Delhi High Court, New Delhi and then the claim by the Income Tax Department against the sale proceeds for the recovery of tax liabilities of Mr. J.C. Gupta.

(4) It is submitted by the objector that the property and the sale proceeds thereof belonged to the objector and the same has been wrongly attached and that the Income Tax dues are against Mr. J.C. Gupta; that the objector became the owner of the said property on 16th March, 1970 by Gift Deed in her favor by her mother- in-law Smt. Shanti Devi; that she is the absolute owner and is

entitled to the sale proceeds lying with the registry of the High Court and that the objector is not liable for the tax dues payable by Mr. J.C. Gupta. As against this, it has been submitted by Mr. R.N. Verma Counsel for the Income Tax Department that Mr. J.C. Gupta on 8th November, 1949 gifted the property to his wife Smt. Shanti Devi Gupta; that this gift was never accepted by the Income Tax Department as Smt. Shanti Devi Gupta was merely a benami-holder/owner and that Mr. J. C. C.upta continued to be the real owner of the said property; that till 1989 the objector Smt. Usha Gupta did not do any thing and these objections are only in the year 1989 belatedly. That Rs. 27,15,000.00 was the Income Tax liabilities in the year 1987 against Mr. J.C. Gupta. It is further contended that the provisions of Benami Transactions (Prohibition) Act do not apply and that the rights of the third party an not effected by benami transactions and that the rights of the Income Tax Department cannot be effected. It is further contended that in view of Section 156 of the Income Tax Act the objector Smt.Usha Gupta is not entitled to the notice. That the sale proceeds in reality belonged to Mr. J.C. Gupta and liable to be attached for the recovery of Income Tax dues even if the documents of gifts are valid, the property belonged to Mr. J.C. Gupta.

(5) COPYOFTHELETTERDATEDDATED25.8.1983ATPAGE-15.IDDRESSED by Smt. Shanti Devi Gupta to the Wealth Tax Officer, District-III-D (4), New Delhi suggests that the value of the property in question had been deleted from her hands from net wealth u/s 25of the Wealth Tax Act for the assessment years 1960-61 to 1973-74 and that the refund had been given to her after giving effect to the orders u/s 25 of the Wealth Tax Act. It is also stated that Mr. ; C. Gupta purchased the said property in her name and she was a benami owner of the said property and later on the said property was included in the hands of her husband Mr. J.C. Gupta for Income Tax and wealth tax purposes and that later on the Wealth Tax Officer excluded this property from husbands from the assessment years 1972-73 onwards and by the said letter Smt. Shanti Devi requested the Wealth Tax Authority to withdraw notices issued to her u/s 16(4) of the Wealth Tax Act.

(6) The letter dated 20.10.1981 which is a reply to notice u/Section 16(4), I.T. Act by the objector to the Ito, Distt.-IV, New Delhi suggests that the income from the 105 property in question has been assessed in the hands of Mr. J.C. Gupta at Bombay and the said property has been excluded by the Income Tax Authorities from the net wealth of the objector (Smt. Usha Gupta) for the assessment years 1970-71 to 1973-74. It is also suggested that the said property had been deleted by the AAC-F, Range, New Delhi vide appeal Nos. 804to808/79/80dated 7th October, 1980and that the value of the said property had also been deleted from the hands of Smt. Shanti Devi the mother-in-law of the objector, who gifted the property to her, vide revision order of CIT-IV, New Delhi u/s 25 of the Wealth Tax Act dated 24th April, 1978 and the effect of such orders have been given in her case and the refund of 1970-71 to 1974-75 years have been adjusted in the assessment years 1975-76. By this letter the objector requested that the net

wealth made may please be computed after due consideration of the above orders wherein the property has been deleted from her net wealth and which is now been assessed in the hands of her father-in-law Mr. J.C. Gupta, who is the real owner of this property.

(7) In my opinion, this letter by the objector would go a great way in suggesting that the property in question even after the gifts of 1949 and 1970 respectively remained the property of Mr. J.C. Gupta, the original owner thereof. On objector''s say the property was excluded from the hands of Smt. Shanti Devi, her predecessor is entitled and the effect of this was also given for the assessment years 1970-71 to 1973-74 and the adjustment in the subsequent years and that the value of the property was also excluded from the net assessable wealth of the objector Smt. Usha Gupta for the assessment years l976-77tol978-79andtheobjectorhcrself requested that her net wealth may be computed after due consideration of the above orders. The conduct of the objector in accepting the orders of the authorities under the Wealth Tax Act and the Income Tax Act and requesting for the computation of her wealth after due consideration of the orders, referred to above, especially with regard to the deletion of the said property from her net wealth and an admission that her father-in-law Mr. J.C. Gupta is the real owner of the property is indicative of the benami nature of transactions of 1949 and 1970.

(8) Thus the above two letters clearly suggest that eve,, on the say of Smt. Shanti Devi and Smt. Usha Gupta (objector) that they were thi benamidars of the real owner Mr. J.C. Gupta. As seen above Smt. Shanti Devi Gupta in her letter dated 25th August, 1983 referred to above has besides other things clearly stated that the property was purchased by Mr. J.C. Gupta in Smt. Shanti Devi''s name and she was only benamidar and that the real owner of the property is Mr. J.C. Gupta would suggest that even the Smt. Shanti Devi, the donee after the passing of the orders by the Income Tax and Wealth Tax Authorities admitted the position that property was purchased in her name by her husband who was the real owner of the property and she is merely a benamidar of the said property which would suggest that Smt. Shanti Devi could not have gifted the property to the objector Smt. Usha Gupta by Gift Deed dated 16th March, 1970 when the donor Smt. Shanti Devi did not have the title over the property in question ,- she being the benamidar only and not the real owner.

(9) It is settled principle of law that benamidar transactions cannot effect the rights of the third party. In the case of Gopal Banha v. Satyanarayan Das and Others reported in 1992 (Vol.194) Income Tax Reports 469; it has been held by the 106 Division Bench of Orissa High Court that the provisions contained in Benami Transactions (Prohibition) Act do not have effect of affecting the rights of the third party and the third party can apply for declaration that the property had been purchased Benami. In the instant case the income tax department is the third party which seeks the recovery of the income tax dues payable by Mr. J.C. Gupta to whom the sale proceeds of the property would belong as he is the real

owner of the said property despite the gift deeds of 1949 and 1970 respectively in favor of Smt. Shanti Devi and Smt. Usha Gupta for the reasons aforesaid.

(10) In the case of.R. Rajagopal Reddy and Others v. Padmini Chandrasekharan reported in Income Tax Reports 213 page 341, it has been held by the Supreme Court that "where a statutory provision which is not expressly made retrospective by the Legislature seeks to affect the vested rights and corresponding obligations of parties, such provision cannot be said to have any retrospective effect of necessary implication. That the Benami Transactions (Prohibition) Act cannot be treated as declaratory in nature. Section 4(1) is not retrospective and does not apply to pending proceedings Section 4(1) has limited operation in pending cases. Section 3 is not retrospective". I am in respectful agreement with this proposition of law. In my humble opinion the principle laid down in this decision would be of no application to the present case, since, the question here is not of retrospective or prospective effect of Section 3, Sections 4(1) and (2) of the Act.

(11) In the case of Manmohanlal and Others Vs. Income Tax Officer, Ward-E, City Circle, Cuttack, ; that it is settled by authority long accepted that tax can be recovered from an assessed only when it becomes a debt due from him and that it becomes a debt due when a notice of demand call ing for payment of the tax has been served on the assessee. If an assessed objects to the recovery proceeding taken u/s 226(4) of the Act on the ground that there has been no valid service of a notice of demand and that, Therefore, no debt is due, the Court must decide the objection and if it uphold the objection, it cannot permit recovery of the tax claimed It is pertinent to note that Mr.J.C. Gupta who is an assessee, is judgment-debtor No. 2 in this execution proceedings. The question of issuance/non issuance of notice of demand would be between the assessed i.e. Mr.J.C. Gupta and the Income Tax Department. As long as the assessed Mr. J.C. Gupta objects to the recovery proceedings taken u/s 226(4) of the Act on the ground that there is no valid service of notice of demand, this Court would not be called upon to decide the objection that there is no valid service of notice of demand, since Mr. J.C. Gupta an assessed has not come forward in these execution proceedingsasjudgmentNo.2raisingtheobjectiononthisscore. Suffice it to say torn the present purpose that the objector who is not the assessee, is not entitled to the notice of demand u/s 156 of the Income Tax Act.

(12) In the case of Iqbal Begum and Others v. Tax Recovery Officer and Others reported in Income Tax Reports 1974 (Vol-97) at page 310 the Division Bench of the Madras High Court has held that"............the rules do not contemplate any notice to the person who hold property Benami for the defaulter before the actual order of attachment is issued but contemplate only a notice to the defaulter calling upon hi m to pay the amounts specified in the certificate of the officer within the specified time and intimating that in default steps would be taken to realise the amount under the Second Schedule...................whether the property really belonged to the 107 defaulter or the person in whose name it

actually stood would be decided by the Tax Recovery Officer when a claim is filed before him under Rule 11...............it cannot, therefore be contended that the Tax Recovery Officer is empowered by the Second Schedule of the Act to attach and sell only the properties which stand in the defaulter''s name and not any property which does not stand in his name but is held Ben ami or in trust or for the benefit of the defaulter. Applying this principle to the present case, the amount lying with the Registry would be liable to be attached since the same appears to have been held Benami by the objector in trust or for the benefit of the defaulter i.e. Mr. J.C. Gupta.

(13) One of the arguments advanced on behalf of the objector is that once the gift deed is executed and has been delivered to the donee the same cannot be revoked or questioned. As far as the principle of law is concerned the same cannot be questioned and I am in agreement with the proposition of law that once the gift deed is executed and has been delivered to the donee, the donor cannot revoke the gift, even before its registration on the ground that the gift cannot be completed until the deed is registered. In the instant case, there is no question of donor Mr. J.C. Gupta revoking the gift made in favor of Smt. Shanti Devi. The above principle would apply when gift deed is sought to be revoked by the donor. That being not the position here, and also on the principle that the Benami transaction, even by the the registered document cannot affect the third party interest, the submission on behalf of the objector in this regard, does not deserve any consideration and for this reason the decision reported in AIR 1927 42 (Privy Council) would be of no assistance to the objector, though the principle enunciated cannot be questioned and I am in respectful agreement with the same.

(14) For the reasons stated above this application under Order 21 Rule 58 CPC being devoid of merits is liable to be dismissed and the amount of Rs. 6,45,000.00 paid over to the Tax Recovery Officer, Mayur Bhawan, New Delhi vide their letter No. Tro Xx, New Delhi dated 17th June, 1988 addressed to the Registrar, Delhi High Court, New Delhi. .

(15) It, Therefore, follows from the above, that the Income Tax Department would be entitled to enforce recovery of its dues payable by Mr. J.C. Gupta against the amount lying with the registry, Delhi High Court, New Delhi lying deposited in the name of the objector/judgment-debtor No. 1-Smt. Usha Gupta. In the result, Ea No. 142/89 fails.